

## **REMARKS**

### **STATUS OF THE CLAIMS**

Claims 17, 21-25, 30-31 and 33-35 are presented. Claim 23 is amended to correct an obvious typographical error. No claims are cancelled. No new claims are added.

No new matter has been introduced.

### **Summary of Examiner Interview**

Applicants acknowledge with gratitude the telephone discussion with Examiner Soroush of December 2, 2008, during which it was agreed: (1) that the Flick reference (Cosmetics Additives – An Industrial Guide, William Andrew Publishing/Noyes, 1991, page 190) is irrelevant, as discussed below; (2) the present office action is not a proper final office action; and (3) the finality of the present office action should be withdrawn.

### **Summary of the Invention as Claimed**

One aspect of the invention as now claimed is a mineral oil-free emollient mixture comprising ethyl hexyl cocoate and a poly-alpha-olefin, wherein the content of ethyl hexyl cocoate is 10-90% by weight, based on the total quantity of ethyl hexyl cocoate and poly-alpha-olefin. The emollient mixture in certain embodiments (claims 23 and 34) has a kinematic viscosity at 100° C of 1 to 100 cSt. The poly-alpha-olefin is preferably hydrogenated, and preferably comprises a dimer of 1-decene and/or a dimer of 1-dodecene (see claims 21 and 33). Another aspect of the invention as claimed is a cosmetic composition comprising the emollient mixture as a mineral oil substitute (see claim 31).

Rejections under 35 U.S.C. § 103(a)

Claims 17, 22-25, 30-31 and 33-35 were rejected under U.S.C. § 103(a) as being unpatentable over Gordon (US 4,534,963) in view of Flick (Cosmetics Additives – An Industrial Guide, William Andrew Publishing/Noyes, 1991, page 190).

Claim 21 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Gordon and Flick, in view of Biatry et al. (US 2003/0125378; “Biatry”).

Gordon discloses a pressed powder cosmetic eye shadow composition containing nacreous material and a binder comprising among other components, a tetraester of specific formula and a poly-alpha-olefin. The Examiner acknowledged that ethyl hexyl cocoate is not disclosed. The Examiner also acknowledged that the instantly claimed kinematic viscosity of poly-alpha-olefin is not disclosed.

In order to cure the ethyl hexyl cocoate deficiency, the Examiner cited Flick as teaching that PEG-60 lanolin is equivalent to ethyl hexyl cocoate. Applicants aver that this is not the case. PEG-60 lanolin is not the same as ethyl hexyl cocoate; they are very different chemical structures, PEG-60 lanolin being a water-soluble polyethoxylated derivative of lanolin, whereas ethyl hexyl cocoate is a water-insoluble fatty alcohol ester of a fatty acid. The cited Flick reference does not indicate the equivalence of these two species, as admitted by the Examiner in the telephone discussion of December 2, 2008. Further, with such divergent physicochemical properties, one skilled in the art at the time of the invention would not have any reasonable expectation of successfully producing a cosmetic composition by substituting one for the other.

Even though Applicants do not necessarily agree with the Examiner's arguments, in the absence of a reference teaching the combination of ethyl hexyl cocoate and poly-alpha-olefins, Gordon alone is not sufficient to provide an

obviousness rejection over the instant claims. The rejection is therefore respectfully traversed and the Examiner is requested to reconsider and withdraw the rejections.

With regard to claim 21, the Examiner acknowledged that Gordon does not teach the hydrogenated poly-alpha-olefin, and added Biatry to teach the equivalence of hydrogenated and non-hydrogenated poly-alpha-olefins in cosmetic compositions. Even though Applicants do not necessarily agree with the Examiner's arguments, they aver that even if Biatry is a reference under 102(e), they reserve the right to swear behind the reference. However, the addition of Biatry still does not overcome the deficiencies of the primary reference. The rejection is therefore respectfully traversed and the Examiner is requested to reconsider and withdraw the rejection.

In summary in view of the above claim amendments and remarks, Applicants believe that the pending claims as amended are in condition for allowance. The Examiner is respectfully requested to reconsider, withdraw the rejections and allow the claims.

If any additional fees are required to further the prosecution of this application, the Office is authorized to charge such fees to Deposit Account No. 50-1943.

Respectfully submitted,

Date: January 16, 2009

/Robert N. Henrie II, Ph.D./  
Robert N. Henrie II, Ph.D.  
Reg. No. 60,851  
Fox Rothschild LLP  
2000 Market Street; Tenth Floor  
Philadelphia, PA 19107-3291  
Tele: (215) 299-2000  
Fax: (215) 299-2150

RNH:pmf

Z:\S DRIVE - CLIENTS\C\COGNIS\PATENTS\IP40066 USA C 2809\DRAFTS\REPLY TO 10-16-08 OA.DOC